

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD EUGENE JAMES,

No. 2:23-CV-0853-KJM-DMC-P

Plaintiff,

## ORDER

SACRAMENTO COUNTY SHERIFF  
DEPARTMENT, et al.,

## Defendants.

Plaintiff, a prisoner proceeding pro se, brings this civil rights action. Pending before the Court is Plaintiff's motion for the appointment of counsel, ECF No. 3.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of “exceptional circumstances” requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See *id.* In *Terrell*, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment  
2 of counsel because:

3       . . . Terrell demonstrated sufficient writing ability and legal knowledge to  
4 articulate his claim. The facts he alleged and the issues he raised were not  
5 of substantial complexity. The compelling evidence against Terrell made it  
extremely unlikely that he would succeed on the merits.

6       *Id.* at 1017.

7       In the present case, the Court does not at this time find the required exceptional  
8 circumstances. According to Plaintiff, appointment of counsel is warranted because: (1) Plaintiff  
9 is unable to afford counsel; (2) Plaintiff's incarceration will limit his ability to litigate; (3)  
10 Plaintiff predicts the trial will involve conflicting testimony and believes counsel would help  
11 Plaintiff to present evidence and perform examinations; and (4) Plaintiff has made repeated  
12 efforts to obtain a lawyer. See ECF No. 3, pgs. 1-2. The Court finds these circumstances are not  
13 exceptional but represent circumstances common to almost every prisoner bringing a lawsuit in  
14 federal court.

15       While there is not enough information for the Court to determine the likelihood of  
16 success at this early stage in the proceedings, the Court finds that Plaintiff's complaint  
17 demonstrates his ability to articulate his own claims. See ECF No. 1. Furthermore, the Court  
18 finds that Plaintiff's facts and legal issues are not so complex as to require counsel. See *id.*

19       Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the  
20 appointment of counsel, ECF No. 3, is denied.

21  
22 Dated: June 23, 2023



23       DENNIS M. COTA  
24       UNITED STATES MAGISTRATE JUDGE  
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